

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
ROBERT D GORINCEN)	CASE NO. 08-24309-jpk
)	Chapter 7
Debtor.)	
*****)	
KENNETH A. MANNING)	
)	
Plaintiff,)	
)	
V.)	ADVERSARY NO. 09-2149
)	
ROBERT D GORINCEN)	
)	
Defendant.)	

ORDER FOR HEARING PURSUANT TO FED.R.BANKR.P. 7055/
FED.R.CIV.P. 55(b)(2) WITH RESPECT TO MOTION OF DEFAULT
JUDGMENT DENYING DEBTOR'S DISCHARGE ["MOTION"]

This adversary proceeding was initiated by a complaint filed on August 13, 2009. The record establishes that service of process of summons and complaint was made upon the defendant, and that no appearance or response to the complaint was filed. An Entry of Default was made on February 18, 2011. The Motion was filed on June 21, 2011.

The complaint seeks to deny the debtor's discharge under a scatter gun approach. The approach is to state numerous grounds under 11 U.S.C. § 727(a) in a complaint, most of which are not supported by sufficient factual allegations to survive a motion to dismiss. The Affidavit of Kenneth A. Manning filed in support of the Motion states information received from a third party source in affidavit form. This is pure hearsay, and the statements in an affidavit that some other person provided information is not admissible evidence, and therefore in this court's view will not sustain a motion for default judgment (See, Fed.R.Ev. 602). The complaint seeks to deny discharge essentially on grounds that the defendant/debtor lied about assets in his possession on the date of the filing of the bankruptcy, but the record contains no more than

conclusory allegations and inadmissible evidence to support these assertions. The real golden ground for assertion of denial of discharge might have been 11 U.S.C. § 727(a)(6)(A), with respect to the court's order entered in Case No. 08-24309 on February 27, 2009 (record No. 12). Unfortunately, the complaint did not include this ground, but rather included grounds which the record does not support. The complaint also seeks monetary relief in the amount of \$2,568.76, again a request which the record in the adversary proceeding does not support for the purposes of the default judgment.

It Is Ordered that a hearing will be held on **November 18, at 11:00 A.M.**, pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(b)(2) to determine the course of further proceedings with respect to the foregoing Motion.

Dated at Hammond, Indiana on October 28, 2011.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record
Defendant